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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,441	03/28/2001	Thomas H. Campbell	21120-303	6655

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JAMES BRUEGGEMANN
SHEPPARD, MULLEN, RICHTER & HAMPTON, LLP
333 SOUTH HOPE STREET 48TH FLOOR
LOS ANGELES, CA 90071

EXAMINER

WINGOOD, PAMELA LYNN

ART UNIT

PAPER NUMBER

3736

DATE MAILED: 11/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/820,441

Applicant(s)
Campbell et al.

Examiner
Pamela Wingood

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3736



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3.28.01
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, and 5 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6,9 6) ☐ Other:

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DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CAR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CAR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CAR 3.73(b).

2. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,245,026. Although the conflicting claims are not identical, they are not patentably distinct from each other because an interventional tool (see the Preamble) in such an application will naturally be a catheter

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independent of whether the word is used or not. Furthermore, the subject matter of the claims is essentially identical.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prionas in view of Kaplan et al.

Prionas discloses a temperature sensing device having a flexible elongate member for insertion into a body lumen having a multiplicity of thermal sensors for sensing temperature variations. The sensors (thermistors or thermocouples) are longitudinally spaced (See col. 1, Lns. 48-60 and Col. 6, Lns. 5-10 and Fig. 8) and have heat-shrunk tubing sheath over the flexible member; however, it does not disclose an expansion device carrying the sensors.

Kaplan et al. discloses the use of an expansion member and a multiplicity of ports on the device (Fig. 14a) in an analogous art for the purpose of providing needed fluids to the site in a spaced fashion. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the device of Prionas as shown by Kaplan et al. because it

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the sensors on the expansion member greater thermal pressure at the tumor location and the ports would allow multiple means of therapy concurrently at the treatment site (Abst.)

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prionas in view of Kauphusman et al.

Prionas discloses the limitations above but does not disclose the sensors on the balloon inflation device.

Kauphusman et al. discloses a rectal thermal sensing unit with sensors (78) on the inflation member and fluid delivery lumen in an analogous art for the purpose of sensing temperature close to the treatment site to provide therapy. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Prionas as shown by Kauphusman et al. because the inflation device would position the sensors in close contact with the desired tissue. (Abst.)


NOTE: Applicant is encouraged to resend the publications and Foreign documents because the Examiner was not able to consider them.

Any inquiry regarding this application can be addressed to Pamela Wingood who can be reached on (703)308-2676.


Pamela Wingood

Patent Examiner

November 17, 2002


MAX F. HINDENBURG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700